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CITIZENS UTILITIES COMPANY
INITIAL COMMENTS-ACCESS TO RIGHTS-OF-WAY, ETC.
MAY 20, 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
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Act of 1996)

CC Docket No. 96-98

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**COMMENTS OF CITIZENS UTILITIES COMPANY ON THE
INTERCONNECTION NOTICE OF PROPOSED RULEMAKING**

Citizens Utilities Company, on behalf of itself and its telecommunications divisions and subsidiaries (hereinafter referred to, collectively, as the "Citizens Companies"), by its attorney, hereby submits its comments on several issues reserved to a second round of filings in response the above-styled Notice of Proposed Rulemaking issued on April 19, 1996, initiating this proceeding ("NPRM"), and shows as follows:

I. Introduction

In these comments, the Citizens Companies address the access to rights-of-way, dialing parity, notices of technical changes and number administration issues reserved for later comment in the *NPRM*. The interest of the Citizens Companies and their general policy positions on global interconnection issues are described in their initial comments in this proceeding, filed on May 16, 1996.

II. Access to Rights-of-Way

The Citizens Companies agree with the Commission's statement that access to poles, ducts, conduits, and rights-of-way is vital to the development of local competition because it

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enables competitors to obtain reasonable access to facilities necessary to offer service.^{1/} The past experiences of one of Citizens' subsidiaries, Electric Lightwave, Inc. ("ELI"), in seeking to negotiate access to incumbent local exchange carrier (local exchange carriers are hereinafter referred to as "LECs") poles, ducts, conduits and rights-of-way prior to enactment of the Act illustrates the wisdom of the Commission's reading of the amended Section 224 of the Communications Act of 1934, as amended (the "Act"). These experiences include the following:

- * One Bell Operating Company ("BOC") routinely refused to allow or negotiate terms for access to telephone poles or conduit space it owned or controlled. When a request for access was denied, the BOC never provided any technical reasons or other information to support the denial. Instead, it merely indicated that access is not available.
- * In many buildings, access to riser space is effectively controlled by the incumbent LEC.^{2/} In some situations, building owners have denied new entrant access to riser space for cable placement, requiring the new entrant to seek access through cabling owned and controlled by the incumbent LEC. The incumbent LEC, in turn, would often deny access or seek to charge exceedingly high retail private line rates for access to the cabling. In other situations, the building owner would allow access only if the new entrant agreed to pay exorbitant charges including, in some instances, a large percentage share of the retail telecommunications revenues derived in the building. Upon information and belief, no such payments have been demanded of incumbent LECs using that same riser space.
- * Some building owners refuse to allow construction of additional conduits into existing buildings and require new entrants to negotiate access through conduit space owned or controlled by the incumbent LEC. The incumbent, in turn, has denied access. That denial has effectively prohibited provision of competitive service by the new entrant to customers in the building.

Prevention of problems of the type that ELI has experienced dictates that a literal reading of

^{1/}*NPRM* at ¶ 220

^{2/} Inside wire rules in some states, including Washington and Oregon, allow building owners to designate the location of the demarcation point. In many instances, the result is that the incumbent LEC retains ownership and control of all riser cable in a building.

the newly amended Section 224 of the Act, buttressed by clear and direct implementation rules, is imperative. The Citizens Companies believe that repetition of past anticompetitive practices on rights-of-way issues must be effectively prevented in order for full and fair development of local exchange competition.

The Commission correctly notes that Section 251(b)(4) of the Act, for the first time, imposes a requirement on LECs to provide nondiscriminatory access to poles, ducts, conduits, and rights-of-way to competitors at rates, terms, and conditions consistent with Section 224.^{3/} The Citizens Companies note that Section 224(f)(1) uses the term “nondiscriminatory” without any reference to the “unjust or unreasonable discrimination” language of Section 202(a) of the Act in establishing a standard for access to poles, ducts, conduits, and rights-of-way. In doing so, Congress clearly recognized the substantial barrier to competition inherent in denial of access to incumbent LEC and other utilities’ poles, ducts, conduits and rights-of-way. The concept of nondiscrimination in this context is synonymous with that of parity of treatment with what the LEC accords itself and its affiliates. Accordingly, the Commission rules should require that an LEC provide competitors access, upon *bona fide* request, to its poles, ducts, conduits and rights-of-way on the same terms and conditions that the LEC provides to itself and its affiliates for similar uses.

In instances where an LEC seeks to deny access to poles, ducts, conduits, or rights-of-way, the Commission should establish rules which clearly impose the burden of proof on an LEC seeking to deny access. The rules should create the presumption that access will be afforded to competitors on terms and conditions identical to those which the incumbent applies to itself or any affiliate, at

^{3/} NPRM at ¶ 222.

cost-based rates proportional to the new entrant's actual occupancy of usable space in or on the facility (and, if necessary, any actual costs incurred for reasonable make-ready modifications) Any other approach retains the current bias and competitive advantage enjoyed by many incumbents.

The only reasonable limitations that the Citizens Companies envision upon access to LEC poles, conduits, etc., are lack of physical space, clearance requirements and electrical code constraints. In these events, the right of access to any available, usable space should be on a first-come, first-served basis.

As mentioned above, building owners have, in many instances, granted incumbent LECs free access to building riser space. If a building owner in such a scenario refuses free access to the riser space to a new entrant, the incumbent LEC should be required to extend the benefit of its free or preferential access to the new entrant. The incumbent LEC should, in this circumstance, provide unbundled access to its riser facilities at rates which recognize that there is no cost for the riser space.

While there is a strong need to address issues regarding access obligations of the LECs, the Citizens Companies also strongly encourage the Commission to move expeditiously to address other right-of-way issues. The *NPRM* at paragraphs 222 through 225 discusses generally additions and amendments to Section 224 that embrace other utilities such as electric, gas, water and steam. There, the Commission states its intention to address most of the additions and amendments to Section 224 in one or more separate proceedings. While the issue of nondiscriminatory access to the poles, ducts, conduits and rights-of-way of the LECs is certainly critical to the development of local exchange competition, so too is access by new entrants to those owned or controlled by these other utilities, especially electric utilities. The Citizens Companies encourage the Commission to move

expeditiously towards a thorough resolution of all access to rights-of-way issues.

II. Notice of Technical Changes

The Citizens Companies agree with the Commission's tentative conclusion that incumbent LECs should be required to disclose all information relating to network design and technical standards and information concerning changes to networks that will affect interconnection. The Citizens Companies further support the proposed categories of information that potential competitors require to achieve and maintain efficient interconnection.^{4/}

A recent experience of Electric Lightwave, Inc. demonstrates why rules dealing with incumbent LEC disclosure of technical changes are necessary. This member of the Citizens Companies' family requested that a Bell Operating Company with which it competes provide a list of all active NXXs within a local calling area. The Bell Operating Company responded that the information was proprietary and would not be provided. It is beyond argument that this is exactly the type of information that falls within the purview of Section 251(c)(5). If a competitive LEC is denied such information, it cannot update its switch and complete calls to any new NXXs.

III. Dialing Parity

The Citizens Companies support the Commission's tentative conclusion that Section 251(b)(3) creates a duty to provide dialing parity for all telecommunications services that require dialing to route a call, and agree that several models are available from individual states for examination.^{5/} The Citizens Companies propose the following model and related principles

^{4/} *Id.* at ¶ 190. Those categories are: (1) date changes are to occur, (2) location at which changes are to occur, (3) type of changes, and (4) potential impact of changes.

^{5/} *Id.* at ¶ 210.

- (1) Where technically and economically feasible and subject to Section 271(e)(2)(A), all local exchange providers must provide intraLATA equal access within 18 months of a *bona fide* request.
- (2) Any carrier may provide intraLATA equal access service even if no *bona fide* request is received.
- (3) IntraLATA equal access should enable end users the option to select one presubscribed interLATA carrier and a different presubscribed intraLATA carrier, *i.e.*, "2 PIC toll" presubscription.
- (4) Balloting should not be required for intraLATA equal access.
- (5) The cost of intraLATA equal access implementation includes software and hardware investments, as well as business and administrative costs such as customer education, service representative training, and customer service activities related to initial intraLATA equal access conversion. This cost should be amortized over a period of time and recovered via a per-line rate element that all intraLATA toll providers pay. The access provider should absorb part of the cost of equal access to the extent that it benefits from the costs incurred to enable equal access (*i.e.*, if the deployed software also enables SS-7 service capability, a portion of the software cost should be attributed to such services, rather than to an intraLATA equal access rate element).
- (6) No initial intraLATA PIC change charge should occur during a reasonable grace period no longer than six months following equal access conversion. These costs should be included in the amortized intraLATA equal access per-line rate element paid

by intraLATA toll providers. A fee should be charged for all intraLATA PIC changes following this grace period. If a LEC voluntarily implements intraLATA equal access prior to a *bona fide* request or a commission mandate, it may choose not to waive initial PIC change charges.

The *NPRM* specifically requests comment on the Commission's interpretation of Section 251(b)(3) regarding nondiscriminatory access to directory assistance and directory listings. The Commission interprets this section of the Act to "mean that all telecommunications services providers' customers must be able to access each LEC's directory assistance service and obtain a directory listing in the same manner, notwithstanding (1) the identity of a requesting customer's local telephone service provider, or (2) the identity of the telephone service provider for a customer whose directory listing is requested through directory assistance ⁶⁷"

The Citizens Companies believe it is imperative that every customer, regardless of which local exchange carrier serves that customer, have access to a directory assistance service that comprehensively includes all customer directory assistance listings for the entire local calling area. Citizens believes the best way to accomplish this goal is to require that each local carrier provide access to its directory assistance database to all competing carriers on a nondiscriminatory, unbundled basis, as recommended by the Citizens Companies in their May 16 comments.

The Citizens Companies believe that, in addition to the above, the reference to directory listings in Section 251(b)(3) should be interpreted to require nondiscriminatory inclusion of a competitor's basic customer listing information in the white pages sections of telephone directories

⁶⁷ *Id.* at ¶ 217.

published by or under the control of incumbent LECs. Customers of all carriers generally look to a single uniform telephone directory to obtain listing and dialing information. Inclusion of new entrants' customer listing information in those directories, on the same terms and conditions enjoyed by the incumbent LEC, is necessary to ensure continuation of a complete single-source and widely available telephone directory for all telecommunications consumers.

IV. Numbering Administration

Section 251(e)(1) of the Act requires the Commission to create or designate entities to administer telephone numbering resources in an impartial manner. In the Notice, the Commission correctly notes that it already has, prior to passage of the Act, taken steps necessary to designate an impartial administrator in its North American Numbering Plan ("NANP") proceeding and tentatively concludes that its actions fulfill the requirement of Section 251(e)(1).^{7/}

The Citizens Companies agree with the Commission's tentative conclusion. The Act requires the Commission to address a wide variety of important issues in a relatively short time frame. There is no reason to "reinvent the wheel" and consume valuable Commission and industry resources by re-litigating issues which have been adequately addressed in a previous proceeding.

The Commission also notes that whatever uncertainty existed between the state and federal jurisdictions over numbering administration issues has been put to rest by Section 251(e)(1).^{8/} The Commission now has undisputed jurisdiction over numbering matters and may delegate some or all of its authority to the states. Prior to passage of the Telecommunications Act of 1996, numbering

^{7/} Administration of the North American Numbering Plan, 78 RR 2d 821 (1995).

^{8/} *NPRM* at ¶257

administration issues were resolved consistent with the findings in the *Ameritech Order*.^{9/} In the *Ameritech Order*, the Commission rejected plans to implement a wireless-only area code overlay, in lieu of the more traditional area code split. The Commission found, as a general proposition, that administration of numbers must not be unreasonably discriminatory or anticompetitive, and rejected the Ameritech proposal because it violated the principles that number administration should facilitate: (i) entry into the communications marketplace by making number resources available on an efficient, timely basis to communications services providers; (ii) no undue favoritism or disadvantage to any particular industry segment or group of consumers; and (3) no undue favoritism of one technology over another.

While the Commission may or may not choose to continue its past practice of delegating certain numbering administration responsibilities to the states, the Citizens Companies support continuation of the competitively neutral guidelines established in the *Ameritech Order*. As competition increases in the local exchange marketplace, resolving numbering issues in a

^{9/} Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois, 10 FCC Rcd 4596 (1995)

competitively neutral fashion becomes more critical. Adoption of the *Ameritech* guidelines is appropriate.

Respectfully submitted,

CITIZENS UTILITIES COMPANY

A handwritten signature in black ink, appearing to read 'R. Tettelbaum', is written over a horizontal line.

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